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August 15, 2022

TO: Joint Agriculture Committee

FROM: Jim Magagna

RE: State Lands Grazing and Agricultural Leasing Issues

In recent years there has been a marked increase in issues arising regarding the renewal of State Grazing and Agricultural Leases. The challenges that lessees are facing appear to result from several factors including, personnel changes and a shortage of personnel in OSLI; a lack of understanding by OSLI staff related to the ranching industry; a stricter focus by OSLI on process at the expense of practical solutions to the challenges that arise; lack of legislative clarity on certain issues.

Another issue that continues to arise involves the grazing of non-owned livestock. The economic realities of today's ranching industry mean that ranching operations often incorporate non-owned livestock into their operations either on a long-term basis or as a follow-up to periods of drought that required disposal of a portion of their owned livestock. It is WSGA's position that, so long as the grazing lessee is managing the livestock and the use of the state leased lands, the grazing of non-owned livestock does not constitute an agreement concerning the leased land.

Currently, under WS 36-5-110, a lessee is allowed to make improvements on the leased lands. This statute refers only to the "value of the improvements." However, under WS 36-5-111, a subsequent lessee is required to reimburse "the contributory value". Contributory value is not defined, and its determination may vary based on each specific operation.

The requirement that a grazing and agricultural lessee have "actual and necessary use for the land." This provision was inserted by the legislature in 2007 to provide bona fide agricultural operations protection from other adverse interests who compete for a grazing or agricultural lease only to protect the land from being grazed. The legislative intent was clearly that any qualified lessee must meet this criterion. However, the lack of clarity in the statute has enabled the current OSLI interpretation that it only constitutes a preference.

As background, I have attached recommendation that WSGA has made to OSLI regarding additions to their Chapter 4 Rules that have been out for public comment. While these recommendations, if adopted, would significantly address our concerns, certain changes can

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best be addressed through legislative language. Our recommendations for your consideration include the following:

1. WS 36-5-104: Provide for automatic lease renewals or establish a statutory grace period for lease renewals to submitted in a timely manner as currently required by statute.
2. WS 36-5-105: Provide that the grazing of noon-owned livestock does no per se require prior approval by OSLI.
3. WS 36-5-111: Strike “contributory value” and insert “depreciated value unless a different value is agreed to between the owner of the improvements and the new lessee.”.
4. WS 36-5-105: Clarify that having actual and necessary use for the land and available forage is a fundamental requirement to qualify as a lessee.

Thank you for your consideration of our recommendations.

Chapter 4 Comments Attached.